(1)

CP-7 (3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Second Appeal No. 210 /2004.

APPELLANT PLAINTIFF : Smt. Jhamin Bai W/o Kisun Sahu, aged 42 years, resident of village Chilfi and Amalidih, cultivator, Tah. Saja, Distt. Durg (C.G.)

Versus

RESPONDENTS DEFENDANTS :

1. Smt. Maina Bai widow of Ramdayal Sahu, aged 50 years, cultivator, R/o village Chilfi, Tahsil Saja, Distt. Durg (C.G.)
2. Setan Bai widow of Adhin Sahu, aged 70 years, R/o village Chilfi, Tah. Saja, Distt. Durg (C.G.).
3. Sevaram S/o Sukhram Sahu, aged 35 years, cultivator, R/o village Chilfi, Tah.Saja, Distt. Durg (CG)
4. Paras S/o Ramdayal Sahu, aged 30 years, cultivator, R/o village Chilfi, Tah. Saja, Distt.Durg (CG)
5. Thanu S/o Bhukhu Sahu, aged 70 yrs. cultivator, R/o village Chilfi, Tah. Saja, Distt. Durg (C.G.)
6. Sudarshan S/o Harde Sahu, aged 35 years, cultivator, R/o village Chilfi, Tah.Saja, Distt. Durg (CG)
7. Khorbahara S/o Uderam Sahu, age 70 years, cultivator, R/o village Chilfi, Tah. Saja, Distt. Durg (CG)
8. A Bhagawani S/o Ghanaram Sahu, aged 48 years, cultivator R/o village Chilfi, Tah.Saja, Distt.Durg (CG).

...contd....

P.R. No. 950/04
Presented by Shri N.S. Dhurandhar Advo.
dated 03.12.04

(2) (4)

8 B Bodhanram S/o Ghanaram, aged 45 years R/o village Chilfi, Tah.Saja Distt. Durg (C.G.).

C. Dharam S/o Ghanaram, aged 45 years, cultivator, R/o village Chilfi,Tah. Saja, Distt. Durg (C.G.) presently residing at Nagpur, Tah. & District Nagpur.

D. Dharmin Bai W/o not known, aged 35 years, Presently residing at Saral, Madawari Nagpur, Tah.& Distt.Nagpur.

E. Amerika Bai W/o not known, aged 30 years, present R/o Mata Mini Nagar, Nagpur, Tah. & Distt. Nagpur.

9. Bhagawani S/o Ghanaram Sahu, age 45 years, cultivator R/o village Chilfi, Tahsil Saja, Distt. Durg (C.G.).

10. Dharam S/o Ghanaram Sahu, aged 30 yrs cultivator, R/o village Chilfi, Tah. Saja, Distt. Durg (C.G.).

11. Bodhan S/o Ghanaram Sahu, aged 28 yrs cultivator, R/o village Chilfi, Tah. Saja, Distt. Durg (C.G.).

12. State of Madhya Pradesh (now C.G.) Through : Collector, Durg, Distt.Durg

13.A Kolhuram S/o Chaituram, aged 40 years R/o village Chilfi, Tah. Saja, Distt. Durg (C.G.).

B. Mangati Bai W/o Bhikhu, aged 35 years. R/o village Karahi, Tah.Saja Distt. Durg (C.G.).

C. Mangatu S/o Chaitu Sahu, aged 30 years R/o Chilfi, Tah.Saja, Distt.Durg (CG)

....contd....

(3)

(5)

D. Joga Bai W/o Radhe Sahu, aged 28 years,
R/o village Karamtara, Tah. Saja,
Distt. Durg (C.G.).

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 C.P.C.

(21)

HIGH COURT OF JUDICATURE AT BILASPUR(C.G)

SECOND APPEAL No. 210 OF 2004

Smt. Jhamin Bai

Vs.

Smt. Maina Bai and 12 others

ORDER

Post for 17.12.2004

Sd/-
Sunil Kumar Sinha
Judge

(22)

HIGH COURT OF JUDICATURE AT BILASPUR(C.G)

SECOND APPEAL No. 210/2004

Smt. Jhamin Bai

Vs.

Smt. Maina Bai and 12 others

Shri N. S. Dhurendhar, Counsel for the appellant

Sunil Kumar Sinha, J,

JUDGMENT
(17.12.2004)

Heard on the question of admission.

(2) This appeal has been filed against the judgment and decree dated 30.01.2004 passed in Civil Appeal No.60-A of 2002 by the Second Additional District Judge (Fast Track Court), Bemetara, Distt. Durg arising out of Judgment and decree dated 26.8.1994 passed in Civil Suit No.67-A of 1990 by the First Civil Judge, Class-II, Bemetara, Distt. Durg (C.G).

(3) The plaintiff filed a suit for declaration that she along-with her sister (defendant no.1) be declared as the joint owners of the suit property having ½ share of each in it. She also prayed for a decree of possession and permanent injunction against defendants no.8 to11. The plaint allegations are that the suit properties were self acquired properties of her father namely Adhindas. After his death, the properties were succeeded by his two daughters, plaintiff and defendant no.1 and his wife

Setan Bai, defendant no.2. It was also pleaded that Setan Bai had surrendered her rights in favour of these two daughters and was having no right or interest in the suit properties. Thereafter, the plaintiff and defendant no.1 are only the joint owners of these properties. She made certain allegations against defendants no.8 to 11 and ultimately prayed for the aforesaid reliefs claimed by her.

(4) Defendants no.1 to 7 and 9 & 13 filed their written statement denying the contentions of the plaintiff. They denied about surrender of any such right by defendant no.2 in favour of plaintiff and defendant no.1. They also pleaded that the plaintiff, defendant no.1 & defendant no. 2 are the co-owners of the property having joint possession over the same. They also pleaded that there was no partition in the family and the property belongs to all of them (Plaintiff and defendants no.1 & 2).

(5) The learned trial Judge framed various issues in this case and after recording the evidence of parties dismissed the suit holding that the plaintiff and defendant no.1 are not the absolute owners of the suit properties and the reliefs claimed by the plaintiff cannot be granted to her. Almost all the issues framed by the trial Court were decided against the plaintiff.

(6) Against the aforesaid judgment and decree passed by the trial Court the plaintiff filed an appeal before the lower appellate Court in which the lower appellate Court dismissed her appeal and confirmed the judgment and decree passed by the trial Court. The lower appellate Court vide para 7 of the

judgment framed 5 points for consideration and replied all these points against the plaintiff confirming the findings of the trial Court, holding that the defendant no.2 has never surrendered her rights in relation to the suit properties and the trial Court has rightly held that the plaintiff and defendant no.1 or the plaintiff alone was not the absolute owner of the property. Against the aforesaid judgment and decree passed by the lower appellate Court, the plaintiff has preferred this appeal u/s 100 of C.P.C. In this way, the plaintiff has lost in both the courts.

(7) Learned counsel for the appellant/plaintiff submits that the trial Court as well as the First Appellate Court had given wrong finding that the properties in question were not the properties of ownership and possession of plaintiff and defendant no.1, and it has also been wrongly recorded that defendant no.2 has not surrendered her right in her husband's property.

(8) I have gone through the records of the Courts below and have also perused the judgment and decree passed by them. The finding in relation to surrender of right by defendant no.2 in favour of plaintiff and the defendant no.1 is a finding of fact which has been arrived at by the two courts below after complete scrutiny of evidence. No documentary evidence in relation to surrender of right has been adduced by the plaintiff and in the easiest manner it can be said that in the husband's property, the wife and two daughters will have their own share. The first appellate Court has also considered the matter at

length and has also recorded the same finding which the trial Court has recorded in this regard. If the aforesaid findings of the Courts below are upheld, the result would be that the plaintiff and defendant no.1 alone would not be the owners of the suit property leaving the interest of defendant no.2. Since the two Courts below have concurrently recorded the aforesaid findings and I do not find any perversity in the same, the concurrent findings recorded by the two Courts below are not disturbed in the second appeal.

(9) After commencement of the amendment in the Code of Civil Procedure in the year 1976, this Court is having limited jurisdiction to entertain the second appeal, which can only be entertained if any substantial question of law is involved in the matter. Please refer to the decision of Supreme Court reported in ***(2000) 3 SCC 708 (Roop Singh (Dead) through LRs –Vs- Ram Singh (Dead) through LRs)*** in which it has been laid down that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C. It has been said by the Apex Court that the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (***Please see Thiagarajan and others***

Vs. Sri Venugopalaswamy B. Koil and others reported in ***(2004) 5 SCC 762).***

(10) In view of the decisions of the Apex Court referred to above, the appeal would only be maintainable if such a situation arises. Since no substantial questions of law are involved in this case and the concurrent findings in relation to above questions of facts have been recorded by the two Courts below, this Court finds no reason to interfere with the aforesaid findings and this appeal filed by the plaintiff u/s 100 of the Code of Civil Procedure has no merits. Hence the same is dismissed at the admission stage itself. No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge